IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 69 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.I.F.R.

Versus

JALAN ISPAT CASTINGS LTD.

Appearance:

1. COMPANY PETITION No. 69 of 2002

BOARD OPINION for Petitioner No. 1

MR HITESH N DAVE for Respondent No. 1

MRS SWATI SOPARKAR for Respondent No. 1

MR RD DAVE for Respondent No. 2

NOTICE UNSERVED for Respondent No. 3

SINGHI & CO for Respondent No. 4

NOTICE SERVED for Respondent No. 5-8

MR PJ MEHTA for Respondent No. 9

MR MA KUVADIA OFFICIAL LIQUIDATOR for Respondent No. 10

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 12/11/2003

ORAL JUDGEMENT

This petition arises from the opinion dated 27.3.2002 forwarded by the Registrar of the BIFR in Case No.126 of 1997 (II) based on the minutes of the proceedings dated 13.2.2002 before the BIFR. The BIFR has recommended that it is just, equitable and in public interest that M/s. Jalan Ispat Castings Ltd. should be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act").

2. The petition was admitted by this Court's order dated 23.6.2003. The admission of the petition was ordered to be advertised in "Jansatta-Loksatta" and "Indian Express", both Ahmedabad editions. The Official Liquidator attached to this Court was appointed as Provisional Liquidator and was directed to take inventory of the assets of the Company. It was also directed that pending this petition, the Company shall not transfer, alienate or create third party interest in respect of any of its properties/assets.

3. When the matter is called out for final hearing today, Mrs. Soparkar appears for Company -M/s. Jalan Ispat Castings Ltd., Mr Singhi appears for ICICI and Mr Rajesh Dave appears for Bank of Baroda.

4. Having perused the opinion of the BIFR and having heard the above named learned counsel for the parties, it appears to the Court that the Company was declared sick under Section 3(1)(o) of the Act and Bank of Baroda was appointed as the operating agency for preparation of a rehabilitation scheme for the Company and the operating agency was directed to undertake the study of a techno-economic-cum-commercial viability of the Company and submit its status report. On the basis of the report submitted by the operating agency, the BIFR circulated the draft rehabilitation scheme prepared for the Company for ascertaining the consent/final stand of the parties in terms of Section 19(1) read with Section 19(2) of the Act. However, at the hearing held on 30.5.2001 the BIFR observed that the Company had not been able to depict the required level of sincerity and seriousness for the rehabilitation and had given no commitment for bringing funds and therefore the BIFR ordered for change of management of the Company by directing the operating agency to give advertisement in two daily newspapers after preparing a profile of the Company and other information available, as it considered necessary, including the considerations under Section 18(2)(i) or 18(11) of the Act. The BIFR also allowed the secured

creditors to file/continue their suits except execution of any decree, if obtained, for which prior permission of the BIFR would be required. In response to the above advertisement the existing promoters were allowed to give their proposal. The operating agency reported that no response was received to the advertisement for the change of management and that the Company had also not given any rehabilitation proposal for consideration to the operating agency and, therefore, the BIFR vide its order dated 16.10.2001 formed a prima-facie opinion that it was just, equitable and in public interest if the Company is wound up under Section 20 (1) of the Act. A show cause notice was also issued to all the interested parties on 31.12.2001. After such notice was issued, at the hearing which took place on 13.2.2002, after hearing the submissions of all concerned and considering the material on record the BIFR came to the conclusion that despite having allowed enough time and opportunity, it had not been possible to work out any acceptable revival scheme for the Company enabling it to make its net worth exceed the accumulated losses within a reasonable time by meeting all its financial obligations; that there was no possibility for the Company to become viable in future. The BIFR specifically recorded in its minutes of the hearing held on 13.2.2002, inter-alia, as under:-

> "On going through the audited balance sheet of the company, the Board noted that the company had come to the Board based on their 31.3.97 balance sheet with their net worth Rs.582.46 lakhs and accumulated losses of Rs.686.87 lakhs, against which their net worth as on 31.3.2001 was 582.46 lakhs and accumulated losses had increased to Rs.2917 lakhs. their term liabilities in March 1997 was Rs.18.16 crores which increased to Rs.27.60 crores by 31.3.2001. The promoters and the Company had been enjoying the protection of SICA unduly despite the fact that they were with the Board for more than the period normally required for rehabilitation and they had not come out with any acceptable viable proposal nor had they come to any understanding with the secured creditors with respect to settlement of their accounts in a manner acceptable to them."

Accordingly, the BIFR recommended that it was just and equitable that the Company should be wound up and confirmed its earlier prima-facie opinion to wind up the Company in terms of Section 20(1) of the Act.

In view of the above opinion, the present Company

Petition has been registered.

5. No affidavit has been filed on behalf of the respondent-Company M/s. Jalan Ispat Castings Ltd.. The Court, therefore, proceeds on the basis of the findings given by the BIFR which are already quoted hereinabove.

6. In view of the aforesaid uncontroverted findings, this Court accepts the opinion of the BIFR and passes the following order:-

The Company Petition is allowed in view of the opinion of the BIFR as rendered in Case No.126 of 1997 at the hearing on 13.2.2002. M/s. Jalan Ispat Castings Ltd. is ordered to be wound up in accordance with the provisions of the Companies Act, 1956. The Official Liquidator attached to this Court, who is already appointed as provisional Liquidator of the Company, is appointed as the Official Liquidator and is directed to proceed further in accordance with the provisions of the Companies Act, 1956.

The Official Liquidator shall take over the possession of the assets and properties and plants and machineries of the Company and prepare the inventory thereof at the earliest and shall proceed in accordance with the provisions of the Companies Act.

The Official Liquidator shall also send intimation of this order to all the Directors of the Company calling upon them to file a statement of affairs in accordance with the provisions of the Companies Act, 1956.

The Company Petition is accordingly allowed in the aforesaid terms with no order as to costs.

(M.S. SHAH, J.)

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